IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.153 OF 1992.

1. Smt.Suman Ganpat Katkar
2. Ganpat Pandurang Katkar,
   both adults, Indian Inhabitants,
   residing at Kolgaon, Paiki
   Katkarwadi, Taluka: Shahuwadi,
   Dist. Kolhapur. .... Applicants.
   (No.1-Org.Complainant)

Versus.

1. Shantaram Ramchandra Katkar,
2. Sarjerao Ananda Chorge,
3. Sanjay Khanderao Khanvilkar,
   All residents of Bombay and
   permanent residents of Kolgaon,
   Paiki Katkarwadi, Taluka:
   Shahuwadi, Dist. Kolhapur
4. State of Maharashtra having
   its office at Mantralaya,
   Bombay. .... Respondents.
   (Nos.1 to 3-Org.Accused)

Shri S.S.Redekar for the Applicants.

Shri K.V.Saste, A.P.P. for the Respondent No.4-State.

CORAM : ABHAY S. OKA, J.

DATED : 7th June, 2005.

ORAL JUDGMENT.

1. This Criminal Revision Application was heard yesterday and today it is kept for dictation of judgment. The Respondents Nos.1 to 3 were prosecuted at the instance of the State for offences punishable under

sections 307 and 326 read with section 34 of the Indian Penal Code. The Applicant No.1 is the Complainant and the Applicant No.2 is her husband.

2. The case of the prosecution is that the Complainant is residing at Kolgaon, Paiki Katkarwadi, Taluka Shahuwadi, Dist. Kolhapur. The husband of the Complainant i.e. Petitioner No.2 herein was in service in the State Bank of India at Bombay as Clerk and Applicant No.1 was looking after the land in village and she was staying with her sons in the village. On 8th October 1988 in the evening the Applicants went for milking she buffalo in their cattle shed. The Applicant No.2 was carrying milk in a steel pot and was walking towards his house. After sometime the Applicant No.1 heard shouts of the Applicant No.2. She noticed that three persons were assaulting the Applicant No.2. At that time the children of the Applicants also started shouting. The Applicant No.2 fell down on the ground. In the light of the lantern which was brought by the daughter of the Applicants, Applicant No.1 identified the accused i.e. the Respondents Nos.1 to 3. According to the prosecution case the Respondent No.1 was holding an axe and the other two were holding sticks. The Applicant No.1 met the Police Patil and accompanied the

Police Patil to Shahuwadi Police Station and accordingly a case was registered under sections 327 and 307 of the IPC.

3. The prosecution examined 14 witnesses. The prosecution placed reliance on various documents. By the impugned Judgment and Order the learned 4th Assistant Sessions Judge, Kolhapur, acquitted the Accused. The learned Assistant Sessions Judge disbelieved the prosecution story.

4. It is not in dispute that the State has not preferred any appeal against the acquittal.

5. The learned Counsel appearing for the Applicants submitted that the evidence is not properly appreciated by the learned trial Judge and he has arrived at an erroneous conclusion. He submitted that the learned Judge has given undue importance to the minor discrepancies in the evidence. He submitted that there was enough evidence on record of previous enmity between the Applicant No.2 and the Accused. He submitted that even the medical evidence was consistent with the case of the prosecution.

6. With the assistance of the learned Counsel appearing for the Applicant I perused the impugned Judgment and order and I have considered the submissions. A perusal of the impugned Judgment and order shows that the learned Judge has considered the oral and documentary evidence on record in detail and has appreciated the evidence. The learned Judge has considered evidence of the Applicant No.1 and considering her version the learned trial Judge came to the conclusion that there was no probability of the Applicant No.1 seeing the assault on the Applicant No.2. The learned trial Judge held that as per the version of the Applicant No.1 at the time of assault on her husband, she was sitting in the cattle shed and the incident took place at a distance of about 35 feet from the cattle shed. Her evidence is that when she was sitting in the cattle shed after about 5 to 10 minutes her son and daughter came there and informed her that the Applicant No.2 has been assaulted and thereafter she went there by carrying a lantern. The learned trial Judge also considered the fact that the incident had taken place in the month of October at about 7.30 p.m. and therefore, there was darkness at that time.

7. The learned trial Judge has considered the evidence

of the Applicant No.2. The learned Judge referred to the evidence of the Medical Officer who examined the Applicant No.2. The Medical Officer stated that there were only three injuries on the person of the Applicant No.2 and the injuries were not dangerous to his life. Considering the fact that there were only three injuries found on the person of the Applicant No.1 which according to the Doctor were caused by hard and blunt object, the learned Judge did not accept the case of the Applicant No.2 that the Respondent No.1 assaulted him with an axe and Respondents Nos.2 and 3 assaulted him by using sticks. After considering the oral evidence on record, the learned trial Judge held that there was no reliable evidence of assault on the Applicant No.2.

8. The Apex Court in the Judgment reported in (2002) 9 S.C.C. page 393, (Tankappan Nadar v/s. Gopal Krishnan) held that in a revision filed by a de-facto complaint against the order of acquittal, the High Court cannot reappreciate the evidence and take a contrary view unless there is a procedural irregularity or there is manifest error of law. This is a case where the impugned Judgment and Order shows that the learned trial Judge has not overlooked any part of the oral or

documentary evidence. There is no procedural illegality or manifest error of law. As held by the Apex Court there cannot be reappreciation of evidence in a revision.

9. Thus even assuming that a different view is possible to be taken on the basis of the evidence on record, no interference is permissible in a Revision Application. It is also to be noted here that the incident is of the year 1988 and the order of acquittal has been passed in the year 1992. In this view of the matter no interference is called for and the revision application is dismissed.

Judge.